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USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 12/28/2016

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LUCAS ANDERSON

December 26, 2016

Hon. Paul A. Engelmayer  
United States District Court Judge  
Southern District of New York  
40 Foley Square  
New York, New York 10007

Re: Doe v. James Cappiello  
14 Civ. 2953 (PAE)

Dear Judge Engelmayer:

I represent James Cappiello in the above-captioned matter. I respectfully request that your Honor allow the filing of my client's submissions in opposition to Plaintiffs' Summary Judgment Motion out of time. I have communicated with counsel for Plaintiffs and there is no objection to this request.

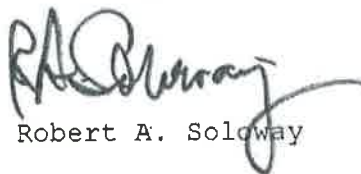
The reason for this application relates to the crash of my laptop computer's word processing software at 6:15 PM, Friday, December 23, 2016, the day when the defense filings were due. I had finished work on my client's submissions and was preparing to forward PDF's of all documents to my secretary for filing on ECF, when I received a message on my computer screen to the effect that my Memorandum of Law was corrupted and could not be opened. After several attempts to access the work, I contacted my office's information technology technician and worked until after midnight to try to retrieve the document, without success. On Saturday morning, December 24, after reaching out for help to several resources, I brought my laptop to a "data recovery specialist" Wilson Esquivel at BNY Tech, Inc., located on West 35th Street in Manhattan. The specialist stated it would take him several hours to attempt to recover the lost data, and said he would contact me when he knew what was possible. At 8:00 PM on Christmas Eve, I spoke to Mr. Esquivel. He told me he still was working on the recovery project, and that he did not yet know whether he would have success. He further

stated that he would not be back in his office until Monday, December 26.

The following day, Sunday, December 25th, I worked all day and until early into Monday morning to re-create the work I had lost on Friday. I was ready to file this morning at 10:00 AM, but my office staff has the day off for the holiday, and I have not been able to reach my secretary until now, who does all my electronic filing. She contacted me recently, and I have emailed her all the documents which I am informed are now ready for filing.

For all of these reasons, I request that the Court permit my filing out of time. If the Court has further questions about this matter, please feel free to contact me. Thank you very much for your attention and consideration.

Sincerely,



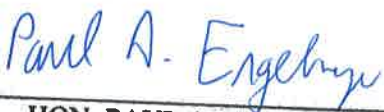
Robert A. Soloway

cc: All Counsel  
(By ECF)

12/28/16

Granted. Under the circumstances, defendant's delayed filing was certainly justified! The Court treats defendant's motion as timely filed.

SO ORDERED:



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HON. PAUL A. ENGELMAYER  
UNITED STATES DISTRICT JUDGE